

**CALIFORNIA INSPECTION & MAINTENANCE  
REVIEW COMMITTEE**

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TO: ALL INTERESTED PARTIES

SUBJECT: ISSUE PAPER

Issue: Should responsibility for the state's Smog Check Program be transferred from the Department of Consumer Affairs/Bureau of Automotive Repair to the California Air Resources Board?

**Recommendation**

The IMRC recommends that:

- (1) The responsibility and authority for policy decisions associated with the state's Smog Check Program be transferred from the Bureau of Automotive Repair (BAR) to the California Air Resources Board (ARB).
- (2) Along with this transfer of policy direction, ARB should also be given budget authority over the program to ensure that resources are budgeted and expended in accordance with policy priorities established by ARB.
- (3) Implementation of the Smog Check Program should remain with BAR.

The IMRC believes that the Smog Check Program's effectiveness in terms of meeting its principle purpose - cost effective emission reductions - appears to be treated secondarily to other considerations by BAR. Rather than failure of any particular staff or manager, the IMRC believes this problem is inherently caused by the fact that neither BAR nor the Department of Consumer Affairs is directly accountable for achieving air quality goals.

**Background and Discussion**

Air quality has long been a top environmental and public health issue in California. Although air quality has been significantly improving for many years, several areas in California still have some of the worst air quality in the nation. Mobile sources account for most emissions in California - more than 70% of the air pollution in some areas - and have proven to be the source of vast and cost effective opportunities to reduce pollution.

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In 1971, the California Legislature enacted the Automotive Repair Act in response to consumer and automotive industry concerns about unacceptable levels of fraud or incompetence in the auto repair market. This law was the basis of the formation of BAR within the Department of Consumer Affairs to regulate the automotive repair industry.

In 1982, the Legislature adopted a vehicle inspection and maintenance program to reduce the emissions coming from light duty cars and trucks. The BAR was designated as the program's administrator and implemented its first biennial Smog Check Program (Program) in 1984.

In 1967, then Governor Ronald Reagan signed into law the Mulford-Carrell Air Resources Act merging the California Motor Vehicle Pollution Control Board and the Bureau of Air Sanitation to create the ARB. For nearly four decades, the ARB has worked to improve California air quality. The ARB emerged as a worldwide leader in emission reduction strategies, particularly for mobile sources. This leadership even has been recognized by Congress in that although federal law provides the US Environmental Protection Agency with authority to establish emission standards for motor vehicles built for sale in 49 of the states, California alone was given authority to establish its own vehicle emission standards. The ARB standards have traditionally required cleaner burning fuels and cleaner operating vehicles than those built for other states.

The ARB has responsibility for many mobile source emission reduction strategies such as

- Vehicle emission standards
- Vehicle fuels
- The Carl Moyer Program designed to provide funding to reduce emissions through scrappage, upgrade and repair of older higher polluting vehicles
- Fleet rules

BAR's authority over the Smog Check Program is an anomaly to the overall role the ARB has in terms of state environmental regulations for mobile sources. Several times over the life of the Smog Check Program suggestions have been made to transfer responsibility for the Program away from BAR to the ARB due to ARB's air quality focus. Following adoption of its recent report to the Legislature and Administration on the Smog Check Program, the Inspection and Maintenance Review Committee (IMRC) decided to investigate this issue once again because of concerns that policy direction for the Program is compromised by its placement within the BAR, particularly in regard to the timely implementation of cost effective emission reduction program modifications.

Although the Bureau of Automotive Repair currently consults with ARB on many issues regarding the Program, the ARB essentially plays a consulting role advising BAR on Program matters rather than acting as the primary decision maker. Thus, the agency responsible for air quality (ARB) lacks the authority to make decisions regarding the Program even though it is ARB and not BAR that is held accountable for air quality.

The IMRC believes that BAR's management of the Program compromises the Program's effectiveness in achieving its fundamental purpose - emission reductions. As part of the Department of Consumer Affairs, BAR's culture primarily focuses on consumer protection and ease of Program administration rather than environmental protection/air quality. Consumer protection and smooth program administration are important and need to be carefully addressed in designing an effort such as the Smog Check Program. In fact, in order for the Program to be

successful, it must be structured in a consumer friendly fashion. ARB has successfully addressed consumer protection in many of its emission reduction programs.

A recent example of ARB's successful implementation strategy was the five-minute idle rule for diesel-powered vehicles in excess of 10,000 pounds. In July 2004, ARB issued a staff report entitled: *Initial Statement of Reasons for Proposed Rulemaking, Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling*. The proposal limited the non-essential idling of diesel-powered vehicles exceeding 10,000 pounds Gross Vehicle Weight Rating, to a specific time limit.

This proposal affected approximately 409,000 vehicles operating in California of which 25% were registered outside of California. ARB staff estimated that failing to enact this measure would add 438 tons of particulate matter to the air in 2005. The measure was designed to reduce excess emissions of particulate matter and oxides of nitrogen.

To ensure the inclusion of all stakeholders and reach a workable compromise, ARB used public meetings, telephone conference calls, and special Internet websites for information distribution and feedback to the Air Resources Board members. As a result of planning and outreach, the ARB successfully enacted the no idle rule in February of 2005 which prohibits idling of diesel-fueled vehicles in excess of five minutes. ARB uses similar strategies for all rulemaking and has been very successful enacting clean air strategies throughout California.

The bottom line is that the sole reason for the existence of the Smog Check Program is to improve public health by implementing carefully constructed emission reduction strategies. Neither BAR nor the Department of Consumer Affairs is directly accountable to federal, state or local air quality program requirements or environmental regulators. Air quality responsibilities and implementation of program improvements necessary to meet our air quality goals have lagged as a result.

The following are examples of delay in implementation of viable emission reduction strategies which we believe demonstrate a lack of commitment to air quality improvement.

## **1 - 2004 Smog Check Program Review**

Health and Safety Code 44003(a)(2) and Assembly Bill 1492 (stats. 1997, chap 803, §15) required that the BAR and ARB report to the Legislature by January 1, 2003 their recommendations on changes to improve the Smog Check Program. The same statute required that the BAR/ARB report be reviewed by the IMRC and that the IMRC submit its own independent report to the Legislature by July 1, 2003.

Unfortunately, the BAR/ARB draft report was not completed and submitted to the IMRC until April 2004, approximately 16 months late. This BAR/ARB joint draft report on the Smog Check Program contained eight recommendations for improving the Program.

In accordance with Section 44021 of the Health and Safety Code, the IMRC reviewed the recommendations and prepared its own report to the Legislature and the Administration. As part of this review, the IMRC held numerous public meetings over a period of many months to review the joint BAR/ARB report, develop and discuss the independent analysis performed by IMRC

members and receive input from interested parties. Both BAR and ARB staff and management were present at these public meetings and participated in the discussions which took place. In November 2004, the IMRC submitted a draft of its report to BAR and ARB, as well as other state agencies and interested parties, to seek their comments. During the Committee's review process, IMRC staff and subcommittee members conducted interagency meetings with BAR and ARB to seek their input for the IMRC report. All stakeholders were informed that comments should be received by the IMRC no later than January 17, 2005.

On January 19, 2005, after the final due date for comments and just prior to the public meeting during which the IMRC was to adopt its report, with no prior notice the BAR sent a letter to the IMRC completely reversing their entire position - essentially rejecting the very recommendations they previously had made in their own report. This action was taken without consultation with their ARB report partners. The ARB (as well as the California Highway Patrol) continues to support these cost effective recommendations to improve the Smog Check Program. (Note: During the May 24, 2005 meeting of the IMRC, BAR management testified that BAR has now again changed direction and intends to accept the recommendations in the original BAR/ARB draft report. They indicated this newest turn of events was in the process of being reviewed by management in the Department of Consumer Affairs. The IMRC has not received any written communication concerning this issue.)

With the exception of Program changes that resulted from the 2004 legislative session and which were, in part, included in the BAR/ARB report ("freezing" the 30-year exemption on vehicles subject to Smog Check, exempting 5<sup>th</sup> & 6<sup>th</sup> model years), BAR rejected all remaining recommendations in their own report. In their opinion, the recent changes should be given some unspecified number of years to be implemented and evaluated before making any additional Program changes or improvements. BAR management asserted that they wanted to take a "wait and see" position to determine what emission reduction impacts occurred as a result of the changes before implementing additional Program improvements aimed at increasing the Smog Check Program's effectiveness.

The IMRC does not believe California citizens should have to "wait and see" for some indefinite period of time before the state adopts other reasonable steps to cost effectively reduce air pollutants. "Wait and see" is certainly not the operating principle for any other state environmental and public health programs. Many of the measures proposed and documented in the formerly joint BAR/ARB report- endorsed by the IMRC - would provide significant cost effective air quality benefits. The IMRC believes foregoing the emission reduction and public health benefits of these recommendations because of an ill-defined last minute "wait and see" approach is inexplicable, unwarranted and untenable.

## **2 - Testing for Evaporative Emissions**

The second example involves delayed decision making on implementation of a low-pressure fuel evaporative test that research indicates could conservatively reduce hydrocarbon emissions by 15 tons per day- a major gain in our battle against air pollution.

In 2000, a consortium of environmental organizations threatened legal action against the State of California for the Smog Check Program's failure to meet the State Implementation Plan commitments. Subsequently, the State of California agreed to incorporate a low-pressure fuel

evaporative test into the Smog Check inspection no later than June 2002 (August 17, 2000 ARB/BAR letter addressed to the US Environmental Protection Agency).

Although BAR has been studying this new test for three years, they still have not formally proposed new regulations to implement such a test. In contrast, Arizona, Delaware, and Kentucky have been conducting fuel evaporative testing for several years with apparent excellent results in terms of emission reductions.

While the IMRC supports thorough analysis and testing of each and every potential Program improvement, this glacial pace to testing, evaluation and decision making appears to flaunt the commitment made by the State in 2000. Just as importantly, California is missing the opportunity to garner vital emission reductions. The IMRC believes that the underlying reason for the absence of a more aggressive approach is that BAR administrators do not have direct responsibility for achieving air quality goals.

### **3 – Emission Failure Cut Points**

Vehicles subjected to Smog Check fail the test when their emissions exceed certain thresholds called “cut points”. BAR implemented the Acceleration Simulation Mode (ASM or loaded mode) testing program on June 8, 1998. Starting a new type of emission test required the implementation of new tailpipe emission failure cut points since the ASM test added Oxides of Nitrogen (NOx) to the list of gases for which vehicles could fail the test. Prior to this time, Smog Check technicians had no experience in repairing vehicles that failed either a loaded mode test or for high levels of NOx emissions. Therefore, implementation required a phased-in approach to ensure that technicians had sufficient time to learn the new procedures.

BAR created very loose cut points for the initial phase of ASM testing which provided time for technicians to learn the new test and diagnostic procedures without penalizing consumers for technician inexperience with the new testing procedure. In fact, the initial cut points for NOx were so high that virtually no vehicles could fail for NOx. In September 1998, cut points were tightened to fail vehicles if the NOx emission exceeded the Gross Polluter level – at least twice the standard for the vehicle being tested.

Given the significant changes to the Program, a phased-in approach is understandable. A balance needed to be struck between smooth program implementation and actually capturing needed emission reductions. If the phase-in period is too short, then some consumers could face unreasonable repair costs due to improper failures by inexperienced technicians. In contrast, if the phase-in period is too long, the environment suffers from the loose cut points that allow more emissions into the atmosphere than necessary for technician training.

BAR’s phase in covered a period of three years and included thirteen additional cut point adjustments before final cut points were implemented in January 2003. The IMRC believes this long-extended phase-in period was excessive to a fault and its slow pace indicative of the BAR culture which does not afford top priority to environmental considerations.

## 4 – Failure to Adjust Repair Cost Waiver Limit

Section 44015 of the Health and Safety Code established authority for an emissions cost waiver and section 44017(a) states in pertinent part that "...the cost limit for repairs under the program, including parts and labor, shall be a minimum of four hundred fifty dollars (\$450) in all areas where the program operates". Section 44017(c) (stats of 1994) states that "The department shall periodically revise the cost limits specified in subdivisions (a) and (c) in accordance with changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics."

For all practical purposes, the \$450 cost limit became fully operational in 1998 with the implementation of the loaded mode program. According to the Bureau of Labor Statistics, the Consumer Price Index has averaged 2.5% annually since the inception of the \$450 cost limit. Therefore, the repair cost waiver should exceed \$600 in 2005. Raising the cost limit would require repairs to failing cars up to the higher cost limit and therefore increase the emission reductions garnered under the Smog Check Program.

Although the statutory language provides some latitude for such adjustment since it states that such adjustment shall occur "periodically", its clear intent is to provide for adjustment "periodically" as opposed to not at all, which is currently the case with BAR. This is another example of BAR failing to pursue legislatively approved opportunities for cost effective emission reductions.

## 5 – Other Considerations

IMRC staff recently reviewed a report from Sierra Research, Inc. entitled *United States Motor Vehicle Inspection and Maintenance (I/M) Programs* dated September 2004. The report itemizes various components of each states I/M program, one of which is the control agency. Only California administers their I/M program using a consumer protection agency. Thirty-nine programs were reviewed and the report data indicates the number of programs controlled by different agencies were as follows:

- Number of Programs Controlled by an Environmental Agency 16
- Number of Programs Controlled by a Health Agency 6
- Number of Programs Controlled by a Motor Vehicle or similar agency 16
- Number of Programs Controlled by a Consumer Protection Agency 1

The IMRC believes that ARB's public regulatory process ensures better public participation than the existing BAR approach. Public participation from a broad community of stakeholders provides significant benefits to the state in terms of credible and informed decision making.

## Alternatives

The IMRC reviewed four different options of program management. In reality, no perfect solution exists for organization of this Program considering the desirability of integrating both policy and operations. However, we believe that there is a better organizational option than the current situation.

Below are the four options we considered, an explanation of each option, and the pros and cons associated with each.

### **Option #1 (Recommended Approach)**

**Transfer all Smog Check Program policy and budget authority to ARB. Leave responsibility for implementation of the Program with BAR.**

Option #1 transfers policy and budget authority to ARB while leaving the BAR Program implementation structure in place. Funds for the Program would be requested by and budgeted to ARB. Upon appropriation, ARB would allocate funds to the BAR through an interagency agreement between the two agencies for the Program.

#### **PROS**

1. Places the responsibility for the Program's success in reducing emissions with the agency principally responsible for air quality. This should increase the focus on the environmental outcomes of policy decisions and improve the timeliness of decision-making and implementation.
2. Centralizes the analysis and evaluation of the Program with one agency - ARB.
3. Allows for continued Program implementation responsibility to reside in the BAR which has a long history of experience with both Smog Check stations and consumers.
4. Allows for Program responsibilities to reside in each agency according to their expertise.
5. Minimal staff changes required.
6. There are many examples of success in interagency cooperative program administration using a Memorandum of Understanding (MOU).

#### **CONS**

1. There are more opportunities for deliberate or unintentional conflicts and failures in Program administration when responsibilities are split.
2. Some modest costs may be associated with this option to cover ARB program oversight which might not be offset by related reductions at BAR.

### **Option #2**

**Retain the Existing Organizational Structure.**

This is the null alternative: the status quo.

#### **PROS**

1. Existing organizational structure is known and familiar to Program participants and administrators.
2. No Legislative change required.
3. No costs associated with any changes in the organizational structure.

#### **CONS**

1. The status quo does not provide for improvement in the administration of the Program.
2. The status quo does not provide the appropriate priority for emission reductions.

### **Option #3**

#### **Transfer the entire Bureau of Automotive Repair program and staff to the California Air Resources Board.**

Option #3 would provide for the transfer of the entire BAR staff and management from the Department of Consumer Affairs to ARB.

#### **PROS**

1. Increases the likelihood that decision making to modify, change, or improve the Smog Check Program will focus on the achievement of environmental goals.
2. Eliminates any potential conflict between policy and administration that might exist with two agencies splitting responsibility for the Program.
3. Ensures that all fees collected from the Smog Check Program are spent on emission-related programs.
4. Eliminates the redundancies that currently exist with two agencies monitoring and reporting on the same program.

#### **CONS**

1. Requires some legislative change.
2. Requires that ARB manage an entire new division with diverse responsibilities directly regulating the automotive repair industry, a subject in which ARB only has limited experience. Additionally, this option would have ARB take on a large role of direct consumer protection extending far beyond the Smog Check Program. These responsibilities would likely be a major distraction from ARB's principle focus.
3. Requires a significant amount of reorganization to relocate BAR staff to within ARB and reorganization costs could be high.
4. There are significant budgetary implications for the Department of Consumer Affairs which currently receives approximately 30% of its overall operating budget from fees collected by BAR.

### **Option #4**

#### **Transfer only the Smog Check Program and Staff from BAR to ARB.**

This alternative would leave BAR with the remainder of its automobile related consumer protection functions.

Option #4 requires the complete separation and transfer of the Smog Check Program from BAR to ARB. This includes the staff and positions supported by Smog Check funds as well as equipment and other things associated with the operation of the Program. This option would leave the remainder of the automotive related consumer protection functions with BAR.



## PROS

1. Places the responsibility for the Program's success in reducing emissions with the agency principally responsible for air quality. This should increase the focus on the environmental outcomes of policy decisions.
2. Centralizes the analysis and evaluation of the Program with one agency - ARB.
3. Ensures that all fees collected from the Smog Check Program are spent on emission-reduction related programs.
4. Eliminates the redundancies that currently exist with two agencies monitoring and reporting on the same program.

## CONS

1. Requires some legislative change.
2. Requires that ARB manage an entire new division with diverse responsibilities directly regulating the automotive repair industry, a subject in which ARB only has limited experience.
3. Requires a significant amount of reorganization to relocate BAR Smog Check staff to within ARB and possibly resulting in high reorganizational costs.
4. There are significant budgetary implications for the Department of Consumer Affairs which currently receives approximately 30% of its overall operating budget from fees collected by BAR.